IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.640 OF 2002

Gopal Anand Pujari,
Proprietor - Hotel Gokul,
Shardaprasad Ramkishor
Tiwari Chawl, S.V. Road,
Goregaon (West),
Mumbai-400 062. .... Petitioner

- Versus -

1. State of Maharashtra
through Secertary, Home
(Transport) Department,
Mantralaya,
Mumbai-400 032.

2. Commissioner of State
Excise, Maharashtra State,
Old Custom House,
Mumbai-400 023.

3. The Collector of Mumbai,
(State Excise Department),
Old Custom House,
Mumbai-400 023. .... Respondents

Shri D.B. Sawant for the Petitioner.

Shri G.W. Mattos, Asst. Government
Pleader, for the Respondents.

CORAM: R.M.S. KHANDEPARKAR, J.

DATED: AUGUST 13, 2004

ORAL JUDGMENT:

1. Heard the learned Advocates for the parties. Perused the records.

2. The short point for consideration which arises in

the matter is whether the revisional authority under the Bombay Prohibition Act, 1949 could increase the quantum of fine imposed by the Collector in exercise of powers under Section 104 of the said Act, in the absence of any revision by the Government or the excise authorities against the order of the Collector and in the revision application filed by the licence holder against the order of the Collector.

3. The facts not in dispute are that on 18-8-1996 an Inspector of the State Excise visited the petitioner's premises and detected certain breaches of the licence conditions and consequently a show cause notice was issued on 24-9-1996 by the respondent No.3 to the petitioner. On considering admission on the part of the petitioner regarding the breaches, the respondent No.3 by its order dated 15-9-1999, in exercise of powers under Section 104 of the said Act, compounded the breaches committed by the petitioner by imposing the compounding fees of Rs.25,000/-. The petitioner preferred an appeal under Section 137 of the said Act before the respondent No.2 on 25-9-1999 which came to be dismissed on 1-10-1999. The petitioner thereafter preferred a revision application before the respondent No.1 in October, 1999 and which came to be dismissed by the impugned order on 25-11-2001 wherein the respondent No.1 increased the compounding fees to Rs.50,000/- from

Rs.25,000/-.

4. Undoubtedly, the revision was filed by the petitioner against the order imposing composition fine of Rs.25,000/- and there was no revision at the instance of the Government or its agencies. Being so, the petitioner is justified in contending that the revisional authority while dismissing the revision application filed by the petitioner could not have enhanced the penalty imposed by the lower authority.

5. It is, however, to be noted that the order imposing the penalty was passed by the Collector taking into consideration the clear admission by the petitioner that he had committed breaches of the rules and conditions of the licence. There is a clear observation to that effect in the order dated 15-9-1999 passed by the Collector while imposing the penalty. It is also a matter of record that the petitioner filed an appeal against the said order even though the said order was based on the clear admission on the part of the petitioner about the breaches having been committed by the petitioner in relation to the rules and the conditions of the licence. Even after dismissal of the appeal, the petitioner persisted in making grievance against the penalty by filing revision application. Considering the nature of the breach of the rules and

the conditions of the licence, in fact, there was no justification to make any grievance about it. Viewed from this angle, though the order enhancing the quantum of fine cannot be sustained, at the same time, nothing prevented the appellate or the revisional authority from ordering the payment of costs while dismissing the appeal and the revision application, and considering the same, the enhanced amount of Rs.25,000/=- certainly could be adjusted as the costs while dismissing the revision application.

6. Viewed as above, though the order imposing enhancing of the compounding fees by Rs.25,000/- cannot be sustained and is liable to be quashed and set aside, at the same time, the petitioner is liable to pay the costs of Rs.25,000/- in the matter. It is to be noted that the breach of the rules and the conditions of the licence are in relation to the business pertaining to liquor and, therefore, the sum of Rs.25,000/- in the facts and circumstances of the case cannot be said to be either arbitrary or excessive.

7. In the result, therefore, the petition partly succeeds. The impugned order, so far as it enhances the compounding fees by Rs.25,000/-, is quashed and set aside. However, the petitioner is held liable to pay the costs of Rs.25,000/-. The costs shall be paid

within a period of four weeks from today. The rule is made absolute accordingly with no further order as to costs.